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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,129	06/21/2001	Donald Smith	9555.109USWO	3012

23552 7590 01/26/2004

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/26/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/744,129

Applicant(s)

SMITH ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-21, 26-32 and 35-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 17-21 is/are allowed.
- 6) ☐ Claim(s) 5-16, 26, 30-32 and 35-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant's arguments filed 10/9/03 have been fully considered but they are not persuasive. See Action below.

I. Rejection of claims 1,5,9-13,26,30-32,35-41 under 35 USC 102 (b) as being anticipated by Stacey on record will be maintained in light of amendment 10/09/03 for reasons on record and reasons as follows. Applicant argues that the methods recite a treatment in the immediate vicinity of a seed, root, plant with a combination comprising a LCO. Applicant argues that the instant methods are directed to enhancing plant crop germination, seedling emergence or growth or breaking dormancy or quiescence of a plant. Applicant argues that no where does Stacey teach or suggest treating a seed root or plant with a composition comprising a LCO for said enhancement as instantly claimed. Applicant argues that Stacey does not teach or suggest incubating a bacterial strain expressing an LCO in the vicinity of root, seed, or plant to enhance plant crop germination or seedling emergence. Applicant argues that Stacey is directed to the use of phytohormone (LCO) for inducing root hair curling and nodulation in leguminous plants. Applicant argues that since the use of Stacey differs from that of the instant Application, the instant invention is not inherently taught by Stacey. Examiner argues that Stacey clearly teaches the Application of LCO to the roots of legume plants. See column 2 lines 44-46. claim 1. Examiner argues that Stacey teaches the application of LCO to legume seedling. See column 4 lines 61-67. It is anticipated that such application of LCO to seed and root would promote plant growth. Therefore, Examiner maintains that said enhancements are inherent since both the prior art and instant

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invention teach the same active step of applying LCO to legume seeds or roots. With respect to the incubation of bacterial strains expressing an LCO, Examiner argues that Stacey teaches the Rhizobium releases LCO in the vicinity of legume roots. Therefore, it is inherent that the release to roots would produce said enhancement.

II. Rejection of claims 6-8,14-16 under 35 USC 103(a) as being obvious over Stacey on record will be maintained in light of amendment 10/09/03 for reasons on record and reasons as follows. Applicant argues that Stacey does not teach or suggest that the intended use of the instant invention is to enhance plant crop seed germination, seedling emergence or growth. See Examiner's arguments above. Examiner reiterates that one having ordinary skill in the art would have been expected to determine the optimum amounts through routine experimentation.

III. Claims 17-21 are allowable. The prior art does not teach or suggest breaking dormancy comprising LCO to plant seed.

IV. Claims 2-4,27-29 are objected to for reasons on record in paper no. 15.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Alton Pryor  
Primary Examiner  
Auf 1616  
PRIMARY EXAMINER